

§ 165.81 Scope of stationary pesticide containers included.

(a) *What is a stationary pesticide container?* A stationary pesticide container is a refillable container that is fixed at a single facility or establishment, or, if not fixed, remains at the facility or establishment for at least 30 consecutive days, and that holds pesticide during the entire time.

(b) *What stationary pesticide containers are subject to the regulations in this subpart?* Stationary pesticide containers designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 liters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide are subject to the regulations in this subpart and must have a secondary containment unit that complies with the provisions of this subpart unless any of the following conditions exists:

(1) The container is empty, that is, all pesticide that can be removed by methods such as draining, pumping or aspirating has been removed (whether or not the container has been rinsed or washed).

(2) The container holds only pesticide rinsates or wash waters, and is labeled accordingly.

(3) The container holds only pesticides which would be gaseous when released at atmospheric temperature and pressure.

(4) The container is dedicated to non-pesticide use, and is labeled accordingly.

§ 165.82 Scope of pesticide dispensing areas included.

(a) *What pesticide dispensing areas are subject to the regulations in this subpart?* A pesticide dispensing area is subject to the containment regulations in this subpart and must have a containment pad that complies with the requirements of this subpart if any of the following activities occur:

(1) Refillable containers of agricultural pesticide are emptied, cleaned or rinsed.

(2) Agricultural pesticides are dispensed from a stationary pesticide container designed to hold undivided quantities of agricultural pesticides equal to or greater than 500 gallons (1,890 li-

ters) of liquid pesticide or equal to or greater than 4,000 pounds (1,818 kilograms) of dry pesticide for any purpose, including refilling or emptying for cleaning. This applies when pesticide is dispensed from the container into any vessel, including, but not limited to:

- (i) Refillable containers;
- (ii) Service containers;
- (iii) Transport vehicles;
- (iv) Application equipment.

(3) Agricultural pesticides are dispensed from a transport vehicle for purposes of filling a refillable container.

(4) Agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container for sale or distribution. Containment requirements do not apply if the agricultural pesticide is dispensed from such a container for use, application or purposes other than refilling for sale or distribution.

(b) *What pesticide dispensing areas are exempt from the regulations in this subpart?* A pesticide dispensing area is exempt from the regulations in this subpart if any of the following conditions exist:

(1) The only pesticides in the dispensing area would be gaseous when released at atmospheric temperature and pressure.

(2) The only pesticide containers refilled or emptied within the dispensing area are stationary pesticide containers which are already protected by a secondary containment unit that complies with the provisions of this subpart.

(3) The pesticide dispensing area is used solely for dispensing pesticide from a rail car which does not remain at a facility long enough to meet the definition of a stationary pesticide container; that is, 30 days.

§ 165.83 Definition of new and existing structures.

(a) *What is a new containment structure?* A new containment structure is one whose installation began after November 16, 2006. Installation is considered to have begun if:

(1) You, as the owner or operator, have obtained all Federal, State, and local approvals or permits necessary to

begin physical construction of the containment structure; AND

(2) You have either begun a continuous on-site physical construction or installation program OR you have entered into contractual obligations. The contract must be such that it cannot be canceled or modified without substantial loss, and must be for the physical construction or installation of the containment structure within a specific and reasonable time frame.

(b) *What is an existing containment structure?* An existing containment structure is defined as one whose installation began on or before November 16, 2006.

§ 165.85 Design and capacity requirements for new structures.

(a) *For all new containment structures, what construction materials must I use?* These are the material specifications for a new containment structure:

(1) The containment structure must be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head, load and impact of any pesticides, precipitation, other substances, equipment and appurtenances placed within the structure. The structure must be liquid-tight with cracks, seams and joints appropriately sealed.

(2) The structure must not be constructed of natural earthen material, unfired clay, or asphalt.

(3) The containment structure must be made of materials compatible with the pesticides stored. In this case, compatible means able to withstand anticipated exposure to stored or transferred substances and still provide containment of those same or other substances within the containment area.

(b) *For all new containment structures, what are the general design requirements?* These are the general design requirements for new containment structures:

(1) You must protect appurtenances and pesticide containers against damage from operating personnel and moving equipment. Means of protection include, but are not limited to, supports to prevent sagging, flexible connections, the use of guard rails, barriers, and protective cages.

(2) Appurtenances, discharge outlets or gravity drains must not be config-

ured through the base or wall of the containment structure, except for direct interconnections between adjacent containment structures which meet the requirements of this subpart. Appurtenances must be configured in such a way that spills or leaks are easy to see.

(3) The containment structure must be constructed with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto it from adjacent land or structures.

(4) Multiple stationary pesticide containers may be protected within a single secondary containment unit.

(c) *For new secondary containment units for stationary containers of liquid pesticides and new containment pads in pesticide dispensing areas, what are the capacity requirements?* These are the capacity requirements:

(1) New secondary containment units for stationary containers of liquid pesticides, if protected from precipitation, must have a capacity of at least 100 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(2) New secondary containment units for stationary containers of liquid pesticides, if exposed to or unprotected from precipitation, must have a capacity of at least 110 percent of the volume of the largest stationary pesticide container plus the volume displaced by other containers and appurtenances within the unit.

(3) New containment pads in pesticide dispensing areas which have a pesticide container or pesticide-holding equipment with a volume of 750 gallons or greater must have a holding capacity of at least 750 gallons.

(4) New containment pads in pesticide dispensing areas which do not have a pesticide container or pesticide-holding equipment with a volume of at least 750 gallons must have a holding capacity of at least 100 percent of the volume of the largest pesticide container or pesticide-holding equipment used on the pad.

(d) *For new secondary containment units for stationary containers of liquid pesticides, what are the specific design requirements?* You must either anchor or